

Adopting Springfield's UGB  
and a look at  
Urban Growth Boundaries  
Around the State  
In 2008

Johnson & Sherton, P.C.

# UGB Adoption Process

## Hybrid of PAPA and Periodic Review

- **PAPA** process at city and county
  - **P**ost-**A**cknowledgment **P**lan **A**mendments
- Under 50 acres: Appeal to LUBA and Court of Appeals
  - Short timelines at both LUBA and Court of Appeals
  - LUBA's authority is limited to affirming, reversing, or remanding for further proceedings consistent with the decision
- Over 50 acres: Review by DLCD/LCDC "in the manner provided for periodic review."
  - Similar timeline at DLCD/LCDC as LUBA, except that it is routinely exceeded
  - Much longer timeline for appeals to Court of Appeals
  - Courts have held that DLCD/LCDC have substantially more power than LUBA to micromanage details of local plans and implementing ordinances with detailed prescriptive instructions in remand orders.



### Legend

- Roma Quadrata:  
8th century B.C.
- Servian:  
565 B.C.
- Aurelian:  
282 A.D.
- Leonine (Borgo):  
843-852
- Paul III/Urban VIII:  
1534-1644

### Population of Rome <sup>[citation needed]</sup>

<a href="#">350 BC</a>	30,000.
<a href="#">270 BC</a>	100,000.
<a href="#">100 BC</a>	>500,000.
<a href="#">44 BC</a>	1,000,000.
<a href="#">100</a>	1,650,000.
<a href="#">300</a>	1,200,000.
<a href="#">400</a>	1,100,000.
<a href="#">450</a>	80,000.
<a href="#">500</a>	50,000.
<a href="#">752</a>	40,000.
<a href="#">800</a>	30,000.
<a href="#">1000</a>	30,000.
<a href="#">1347</a>	17,000.
<a href="#">1519</a>	50,000.
<a href="#">1527</a>	32,000.
<a href="#">1590</a>	90,000.
<a href="#">1660</a>	120,000.
<a href="#">1798</a>	150,000.
<a href="#">1814</a>	117,000.
<a href="#">1832</a>	138,000.
<a href="#">1848</a>	150,000.
<a href="#">1871</a>	244,000.
<a href="#">1900</a>	600,000.
<a href="#">1921</a>	692,000.
<a href="#">1931</a>	1,000,000.
<a href="#">1944</a>	1,600,000.
<a href="#">1990</a>	3,500,000.

## The Walls of Rome

### Jim Tice and Allan Ceen

Department of Architecture, Pennsylvania State University

Department of Architecture, University of Oregon

Posted: April 15, 2005

<http://nolli.uoregon.edu/wallsOfRome.html>

<http://nolli.uoregon.edu/default.asp>



## Rome in 1551



Bufalini's 1551 Map of Rome <sup>4</sup>

# Dunwich, England From 1300 - 2008

*Archeology,*  
January-February, 2009





# Goal 14 Location Factors

## Boundary Location

- The location of the urban growth boundary and changes to the boundary shall be determined by evaluating alternative boundary locations consistent with ORS 197.298 and with consideration of the following factors:
  - (1) Efficient accommodation of identified land needs;
  - (2) Orderly and economic provision of public facilities and services;
  - (3) Comparative environmental, energy, economic and social consequences; and
  - (4) Compatibility of the proposed urban uses with nearby agricultural and forest activities occurring on farm and forest land outside the UGB.

# Goal 14 Need Factors

## Land Need

- Establishment and change of urban growth boundaries shall be based on the following:
  - (1) Demonstrated need to accommodate long range urban population, consistent with a 20-year population forecast coordinated with affected local governments; and
  - (2) Demonstrated need for housing, employment opportunities, livability or uses such as public facilities, streets and roads, schools, parks or open space, or any combination of the need categories in this subsection (2).

# Goal 14 Needs Analysis

- Suitability criteria:
  - In determining need, local government may specify characteristics, such as parcel size, topography or proximity, necessary for land to be suitable for an identified need.
- Current UGB alternative requirement
  - Prior to expanding an urban growth boundary, local governments shall demonstrate that needs cannot reasonably be accommodated on land already inside the urban growth boundary



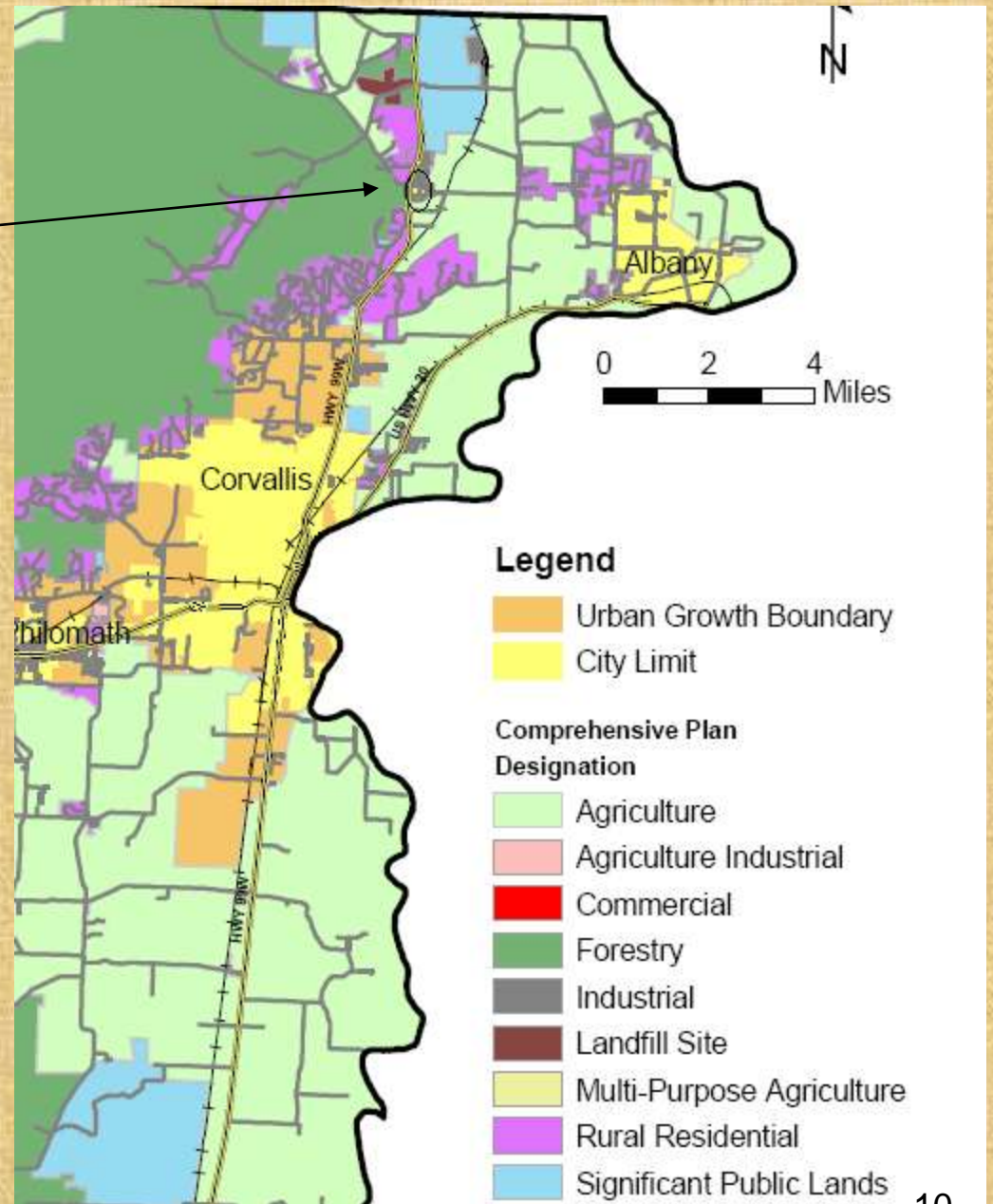
# ORS 197.298(3)

- “Land of lower priority . . . may be included in an urban growth boundary if land of higher priority is found to be **inadequate** to accommodate the amount of land estimated [to be needed] for one or more of the following reasons:
  - “(a) Specific types of identified land needs cannot be reasonably accommodated on higher priority lands;
  - “(b) Future urban services could not reasonably be provided to the higher priority lands due to topographical or other **physical constraints**; or
  - “(c) Maximum efficiency of land uses within a proposed urban growth boundary requires inclusion of lower priority lands in order to include or provide services to higher priority lands.”

**Adair Village**

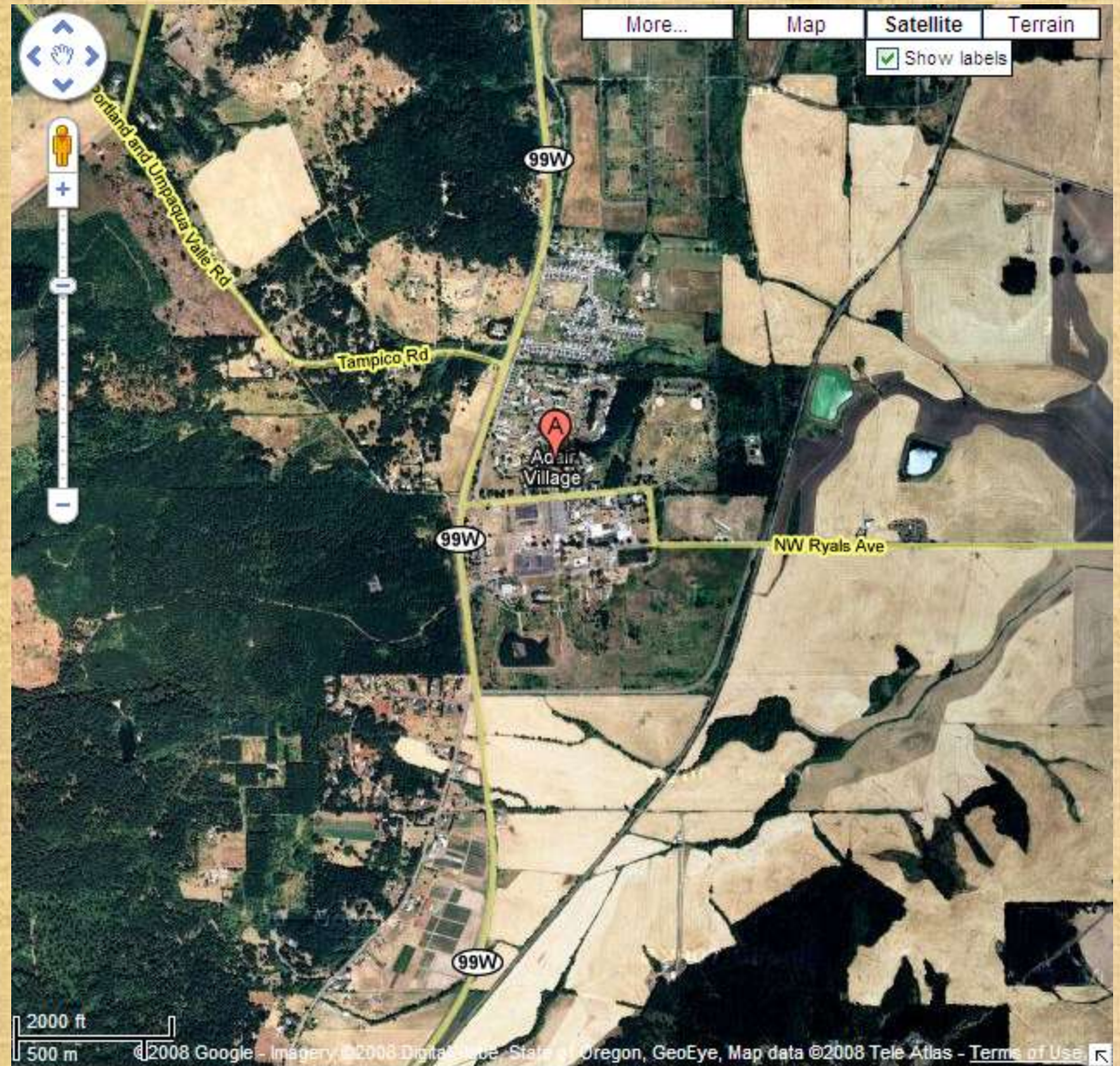


**Benton County Comprehensive  
Plan Map**





## Adair Village





# Adair Village

- Timeline 2005-2008
  - March, 2006: Application for UGB expansion filed.
  - 2007: City/County adopt PAPAs adding 143 acres of EFU land to UGB for HDR and athletic fields.
  - August, 2007: LUBA finds flaws
    - City understated available land inside UGB
    - City ok on population forecast
    - *City ok on capacity of land to be added*
    - City ok on choosing EFU land instead of land with higher priority for inclusion under ORS 197.298
  - February, 2008: Court of Appeals finds more flaws
    - City understated capacity of land to be added
  - Summer, 2008: on remand
    - City/County amends density policy
    - City County readopts same UGB expansion
  - December, 2008: LUBA
    - Affirms city/county on appeal of amended density policy
    - Receives record on appeal of readopted UGB expansion.
- Timeline 2009-2010: LUBA decision on readopted UGB expansion likely in March, with decision by Court of Appeals, if necessary, in late 2009 or early 2010.

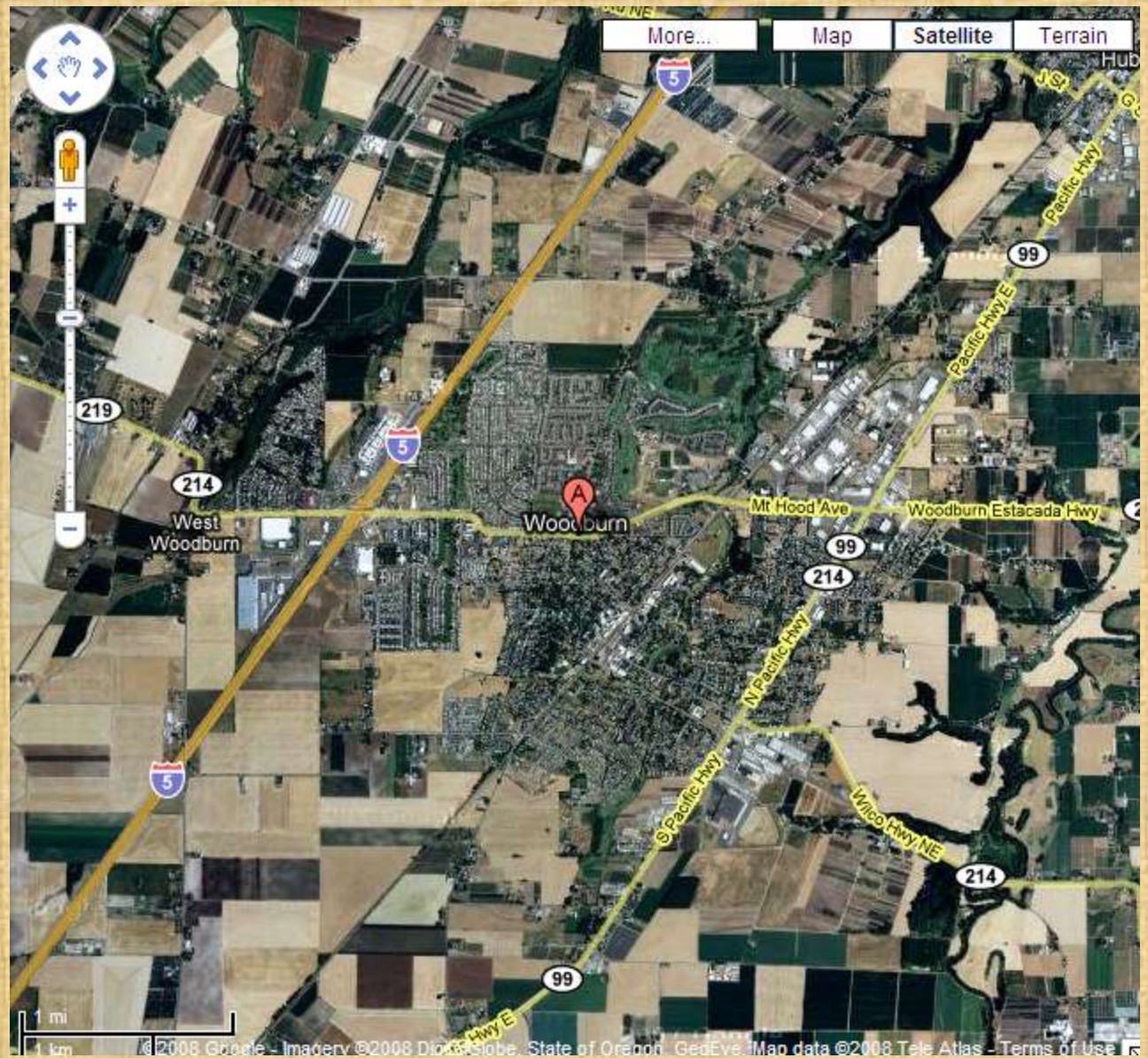
# Adair Village

## Court of Appeals Rulings on Priorities Issues

- Justification for excluding exception area and including agricultural lands because of highway barrier.
  - ORS 197.298(3) allows including lower-priority lands “if land of higher priority is found to be inadequate.”
  - “The statutory reference to ‘inadequate land’ addresses suitability, not just quantity, of higher priority land.”
  - Whether there is “inadequate land to serve a need depends not only on the constraints identified by ORS 197.298(3), but also the criteria for locating” a UGB expansion “under Goal 14.”
  - “Nothing in the text or context of the statute limits ‘physical constraints’ to natural constraints.”
  - A highway can be a physical constraint under 197.298(3).
  - Whether a particular highway and other factors mean that urban services cannot reasonably be provided to a particular area is a question of substantial evidence.

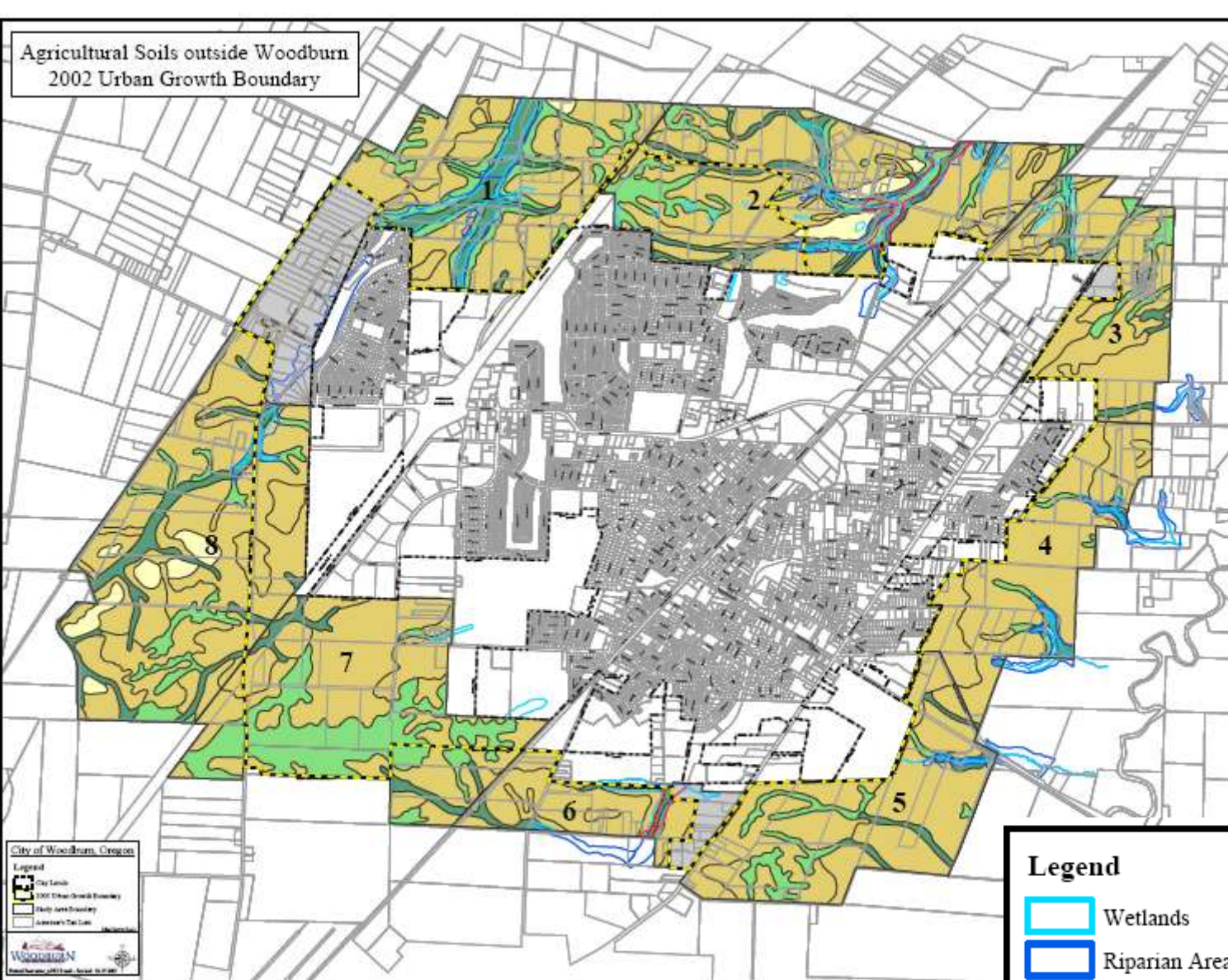


# Woodburn





Agricultural Soils outside Woodburn  
2002 Urban Growth Boundary



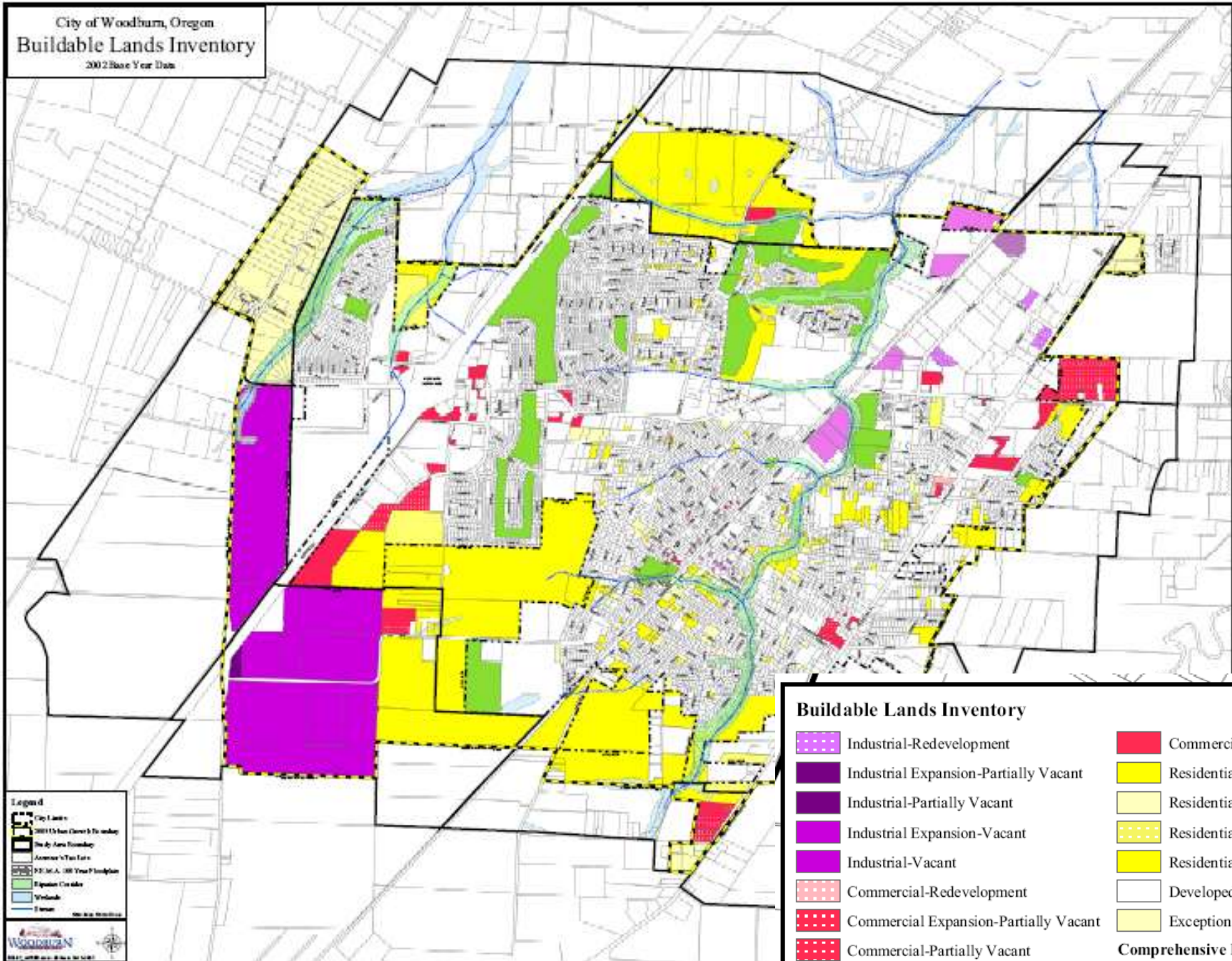
Legend

- Wetlands
- Riparian Areas
- NWI Line Study Area
- Flood Plain
- F-MC

Soil Capability Class	
I	II
III	IV
Exception Areas	



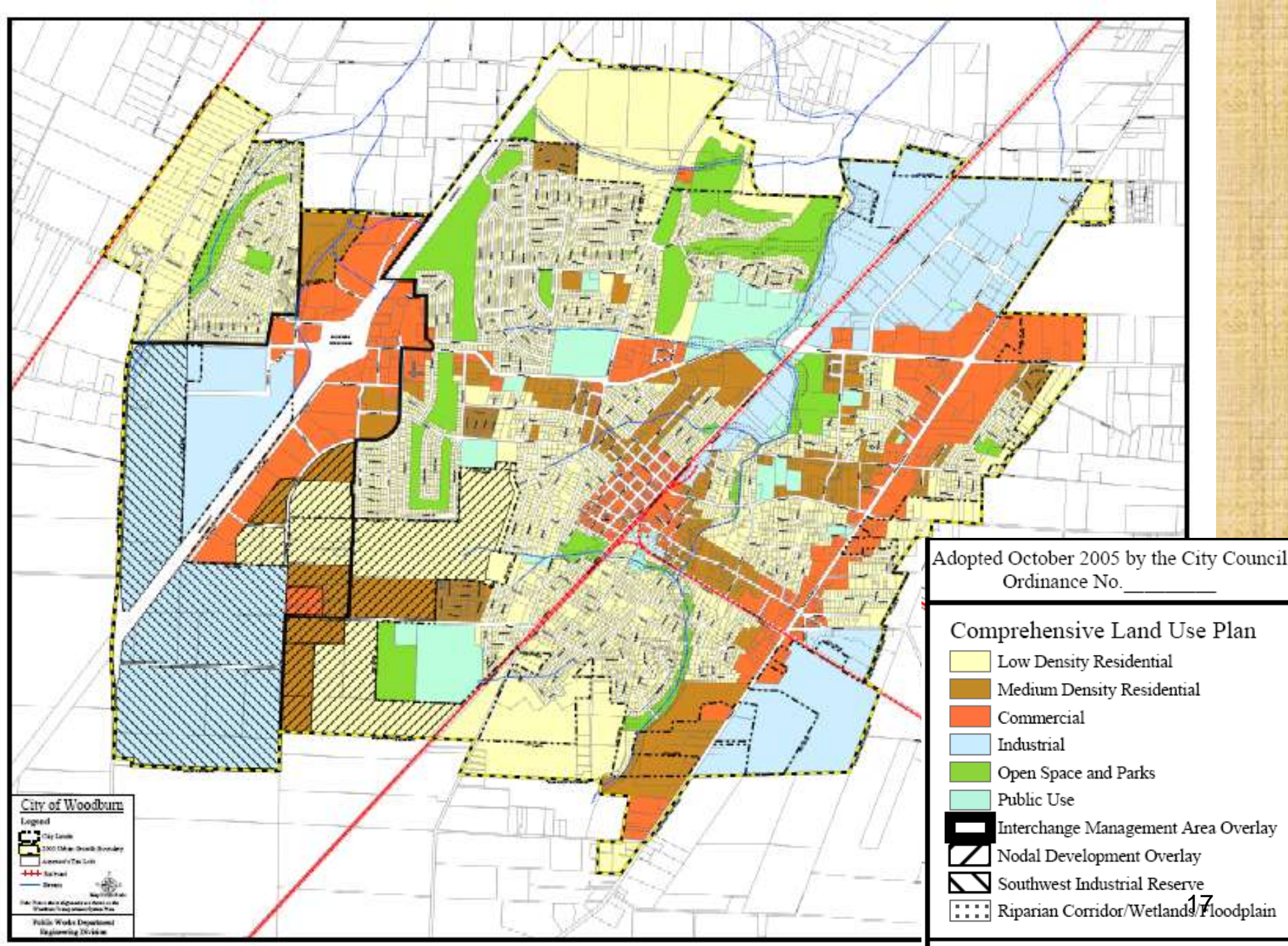
City of Woodburn, Oregon  
Buildable Lands Inventory  
2002 Base Year Data



**Buildable Lands Inventory**

- |                                       |                              |
|---------------------------------------|------------------------------|
| Industrial-Redevelopment              | Commercial-Vacant            |
| Industrial Expansion-Partially Vacant | Residential Expansion        |
| Industrial-Partially Vacant           | Residential-Infill           |
| Industrial Expansion-Vacant           | Residential-Partially Vacant |
| Industrial-Vacant                     | Residential-Vacant           |
| Commercial-Redevelopment              | Developed                    |
| Commercial Expansion-Partially Vacant | Exception Areas              |
| Commercial-Partially Vacant           | <b>Comprehensive Plan</b>    |
| Commercial Expansion-Vacant           | Open Space and Parks         |







# Woodburn UGB

- Adds 546 acres for residential uses
- Adds 409 acres for industrial uses
- Plan period is 2000-2020
- Forecasted growth: from 20,000 to 34,919
- LCDC Approval January 2007
- Process began in 1997
- On appeal to Court of Appeals
  - Multiple briefing and record extensions
  - Oral argument expected in 2009
  - Decision expected in 2009-2010

# Woodburn Timeline

- 1996 – City begins periodic review
- 1997 – LCDC approves periodic review work program
  - 11 periodic review “Work Tasks”
  - Work Task II: comm/ind. land need/supply for years 2000-2020
- 2001- 2005 -- City adopts Ec. Dev. Strategy, EOA, report on site requirements for target industries, updates to TSP and PFP, other plan and zone amendments, and, finally, UGB amendments.
- 2006 – Marion County co-adopts, and city submits completed periodic review work tasks.
- 2007 – LCDC approves Task 2 and UGB amendment.
- 2007 -- Opponents appeal to Court of Appeals.
- 2007 -- LCDC gets extension to file record, files incomplete record, eventually has to file supplemental records before briefing can start.
- 2008 – Court grants opponents multiple extensions to file briefs.
- 2009 – Oral argument expected by mid-year.
- 2010 – Likely year for decision by Court of Appeals.

# Issues in Woodburn Appeal

- Amount of land needed for industrial use
  - Did LCDC err in accepting Woodburn's use of a "targeted industries" methodology?
  - Did LCDC err in accounting for capacity of employment land in existing UGB?
  - Can UGB include more land than is actually expected to develop for comm/ind uses within 20-year plan period?
- Choice of lands to be added to UGB



# Petitioners' brief in Woodburn Appeal -1

- The LCDC approved
  - “inclusion in the Woodburn UGB of far more land than the city is projected to need in the next 20 years”
  - “inclusion of some of the best farm land in Oregon”
  - “skipping over suitable lands inside the [existing] Woodburn UGB.” pp 2-3

## Petitioners' brief in Woodburn Appeal - 2

- LCDC misinterpreted the “short-term land supply” required by the Goal 9 rule.
  - LCDC read it to allow more than a 20-year total supply.
  - The rule makes it a “subset of the “total land supply.” pp. 11-13
- LCDC's practice of requiring a 20-year UGB, now codified in regulation, builds ‘market choice’ into the land supply. p. 13



## Petitioners' brief in Woodburn Appeal - 3

- LCDC and the City erred by failing to link the targeted industries analysis to the adopted 20-year population forecast.
  - “. . .contrary to the Goal 14 need factors, which link the 20-year population forecast with a city's determination of its housing, employment, and other urban land needs.” p. 18

## Petitioners' brief in Woodburn Appeal - 4

- LCDC and the City erred by failing to count as available for targeted industries any land inside the existing UGB except one parcel currently being held for future expansion where the record shows that the current owner might change its plans. p. 23.



## Petitioners' brief in Woodburn appeal - 5

- LCDC erred by accepting the city's criterion of 2 miles from the city's I-5 intersection as an "identified need" when the record showed only that it is "a 'preference,' not a necessity, and that it is not even a preference for most of the targeted industries." p. 32

## LCDC's Woodburn brief - 1

- “Goal 14 does not require that job growth estimates necessarily be proportional to population growth.” OAR 660-024-0040(5)
- “The 20-year need determinations are estimates which, although based on the best available information and methodologies, should not be held to an unreasonable level of precision.” OAR 660-024-0040(1).



## LCDC's Woodburn brief - 2

- ORS 197.712 requires plans to provide “***at least*** an adequate supply of sites of suitable sizes, types, locations, and service levels for industrial and commercial uses consistent with plan policies” p. 14
- The Goal Nine Rule requires that “the total acreage of land designated must ***at least*** equal the total projected land needs for each industrial or other employment use category identified in the plan during the 20-year plan period.” p. 15

## LCDC's Woodburn brief - 3

- “Land needed to attract industrial employers over the 20-year period may be different from the amount of land those industrial employers will actually develop. .
- “A failure to consider and provide for the long-term needs of a targeted industry may seriously compromise the city’s ability to attract that industry in the first instance.”  
p. 16



## LCDC's Woodburn brief - 4

- Woodburn properly “determined its industrial land need based on a ‘site-needs’ approach to attract targeted industries” to meet identified needs. p. 16
- Woodburn properly “identified a need for industries that would provide higher wage jobs to its residents, thus reducing commuting times and generating tax revenue to ease burdens on schools and other social services.” p. 16

## LCDC's Woodburn brief – 5

- “A site-needs analysis focuses on the type of sites the industries require, not the amount of area that employees have been shown to use.”
- “The new Goal 14 allows a local government to specify characteristics for land to be suitable for its identified need, and the city’s land need determination, based on parcel sizes and locations suitable for targeted industries, is a proper application of the new goal.” pp 17-18



## LCDC's Woodburn brief - 6

- A UGB can be expanded to include more Goal 9 land than is required during the 20-year planning period if necessary to assure:
  - an adequate “short-term supply” as required by the Goal 9 rule. p. 18
  - Sufficient “market choice among sites.” p. 19

## LCDC Woodburn brief - 7

- The city is “not required to use the medium growth rate or a strict employee-per-acre methodology based on the population projection.” p. 20
- “The city was not required by statute, goal, or rule to prepare a job growth projection.” p. 22
- Although the city did prepare a job growth projection, it was not required to tie its 20-year land need to that job growth projection.” p. 22



## LCDC Woodburn brief - 8

- “A city may plan for economic growth that exceeds [forecasted] population growth in compliance with the goals.”
  - “Here the city envisions employment growth exceeding its population growth in part because the city has too few jobs for its residents, causing it to become a bedroom community. . . . To attract those jobs, the city targeted certain industries, many of which will be regional employers, and provided suitable sites for those industries, in full compliance with the statutes, goals, and rules.” p. 23

## LCDC Woodburn brief - 7

- The city properly excluded from its inventory of available industrial lands inside the UGB
  - existing vacant buildings
  - partially vacant and potentially redevelopable land owned by an existing industrial firm and either
    - reserved for future expansion, or
    - used for industrial storage

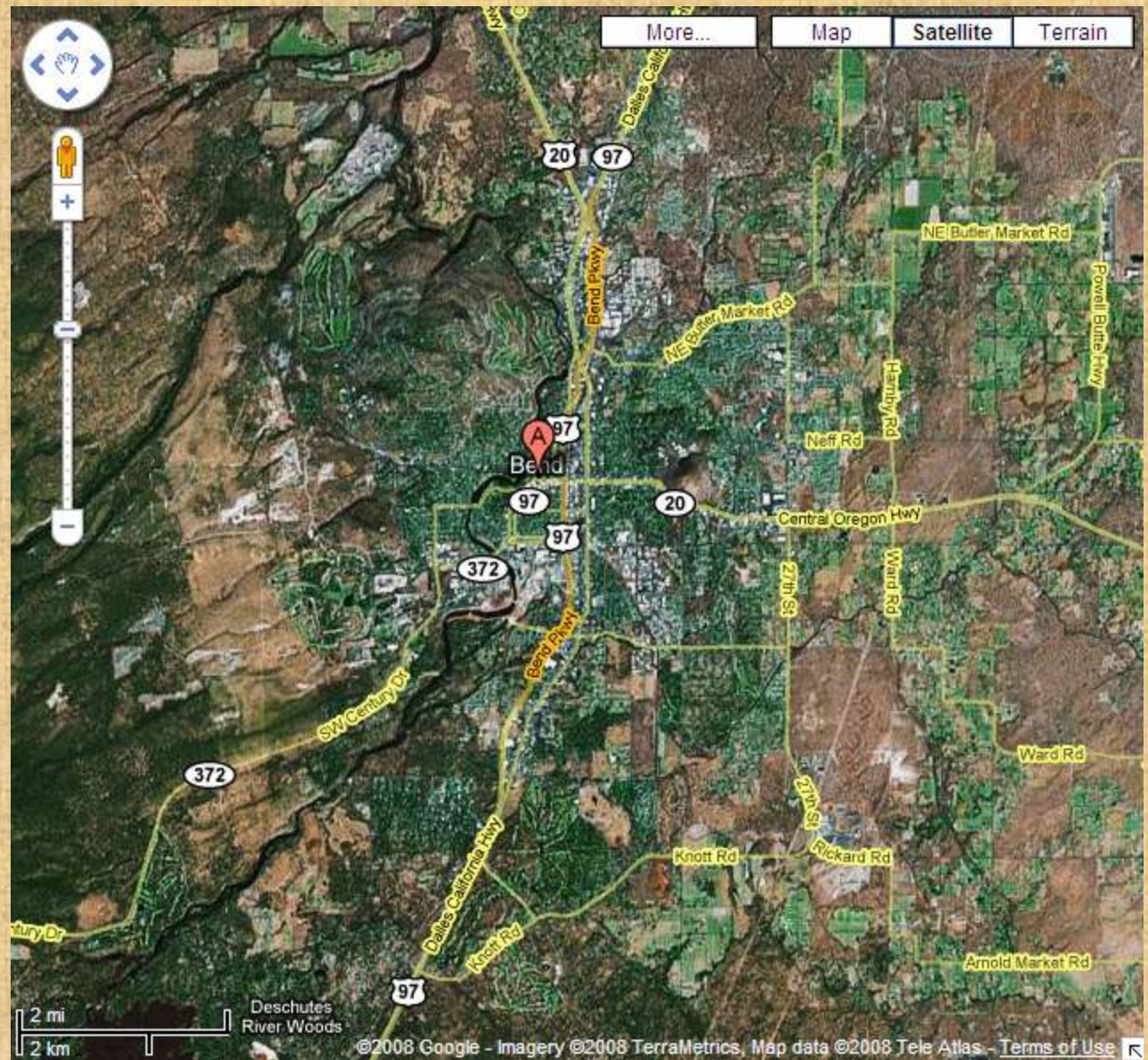
p. 28

# LCDC Woodburn brief - 8

- Woodburn correctly prioritized lands to be added to the UGB.
  - The city properly determined that, to utilize its comparative economic advantage, it needed to provide large, flat, developable sites within two miles of the I-5 interchange to attract its targeted industries.
    - LCDC found that the 2-mile limit was supported by studies from Portland Metro and ECONW and met the “measurable standards” requirement of the Goal 9 rule.
  - The city correctly determined that an area of Class III farm soils could not reasonably accommodate its identified need because it was beyond the 2-mile limit.
  - Therefore, the city did not have to consider that area in its ORS 197.298 analysis.

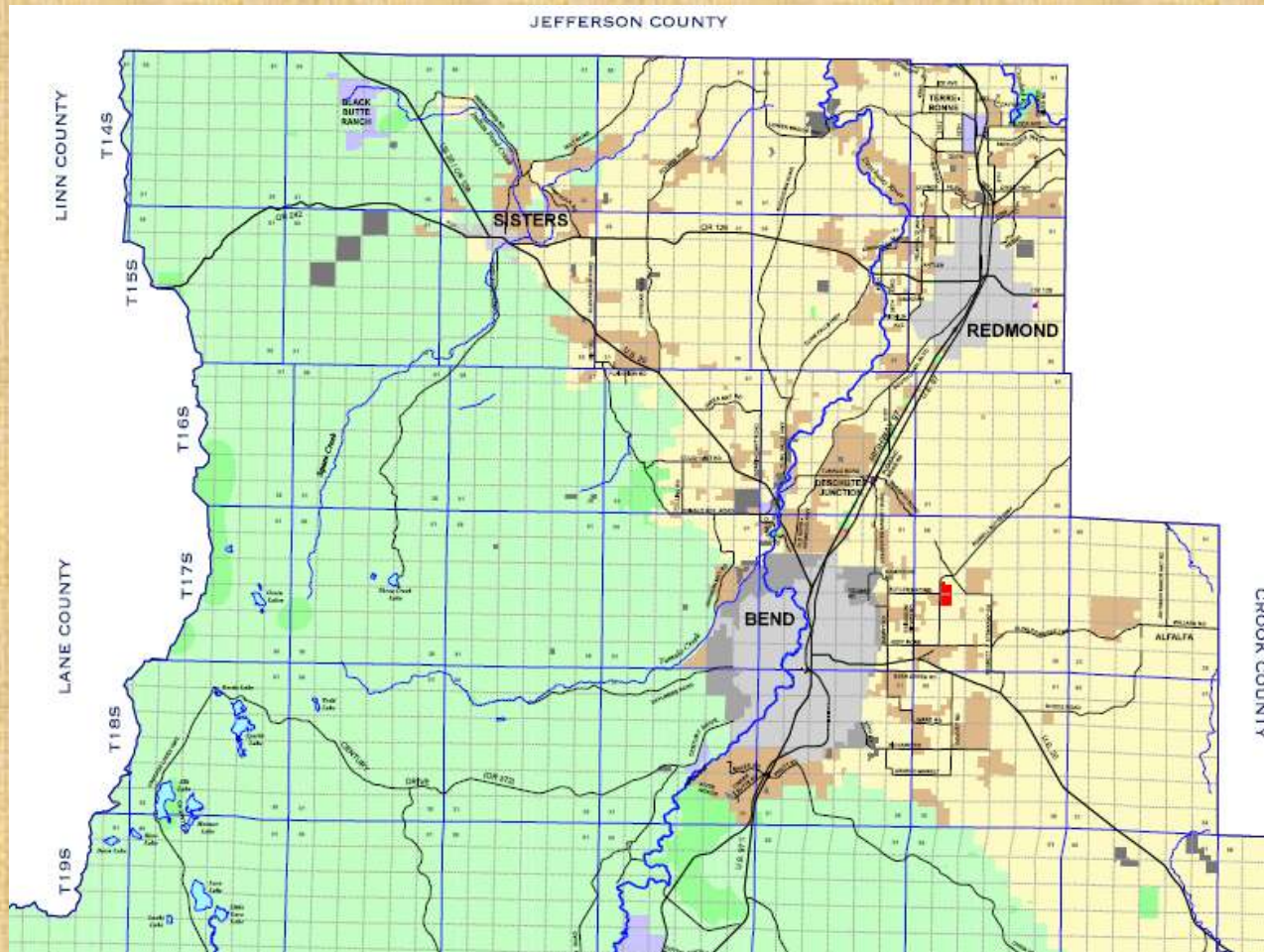


# Bend

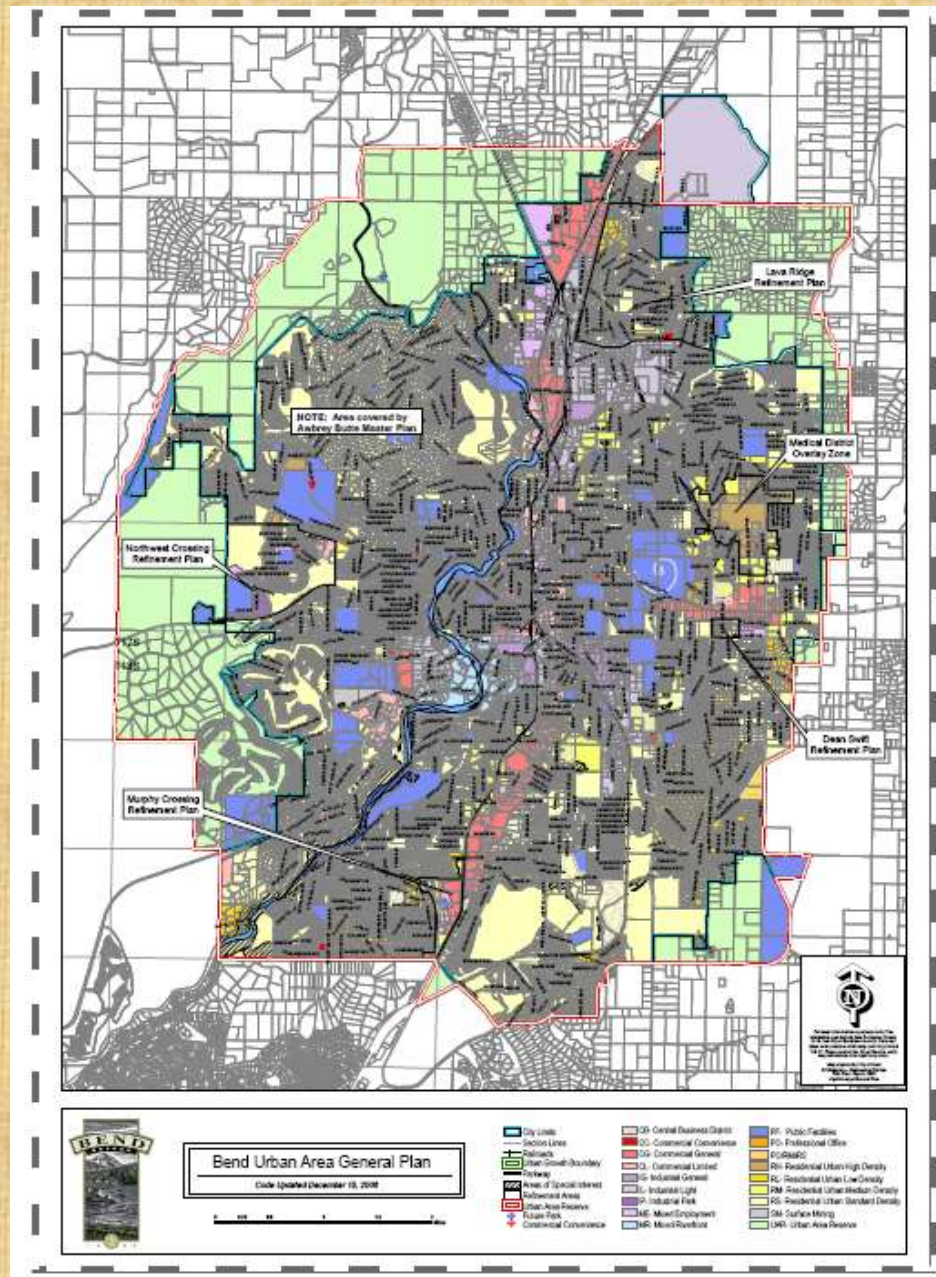




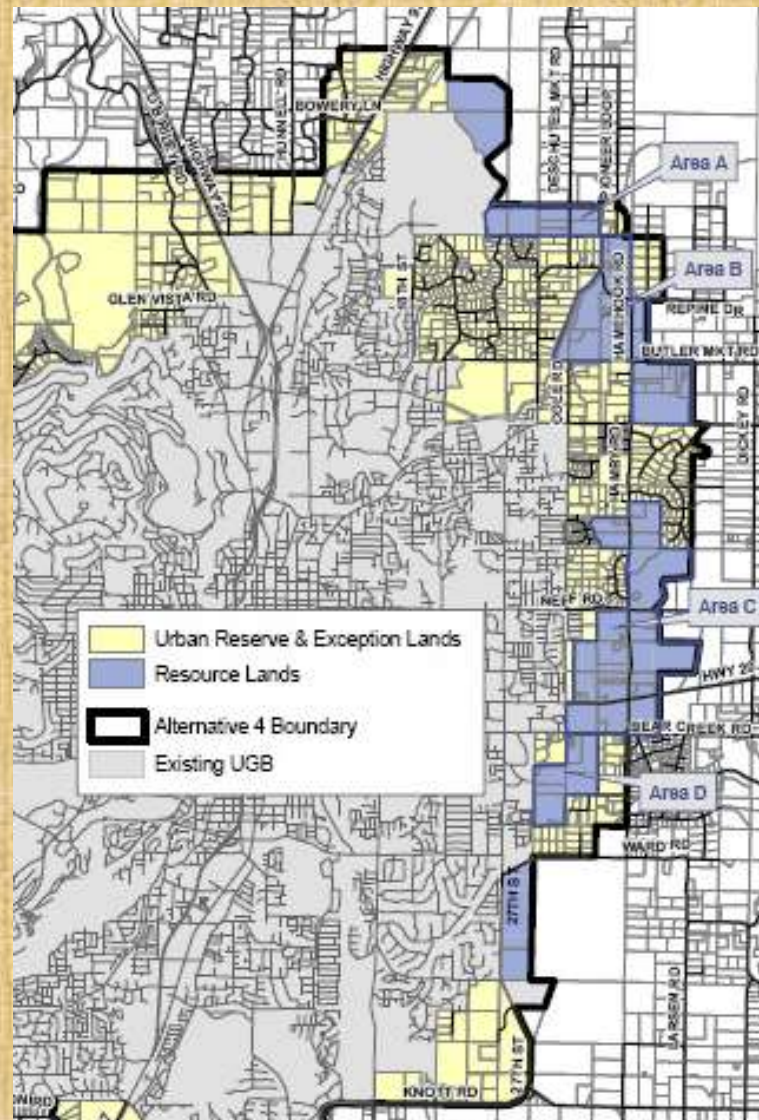
# 2008 Deschutes County Comprehensive Plan



# Current Bend Comprehensive Plan Map

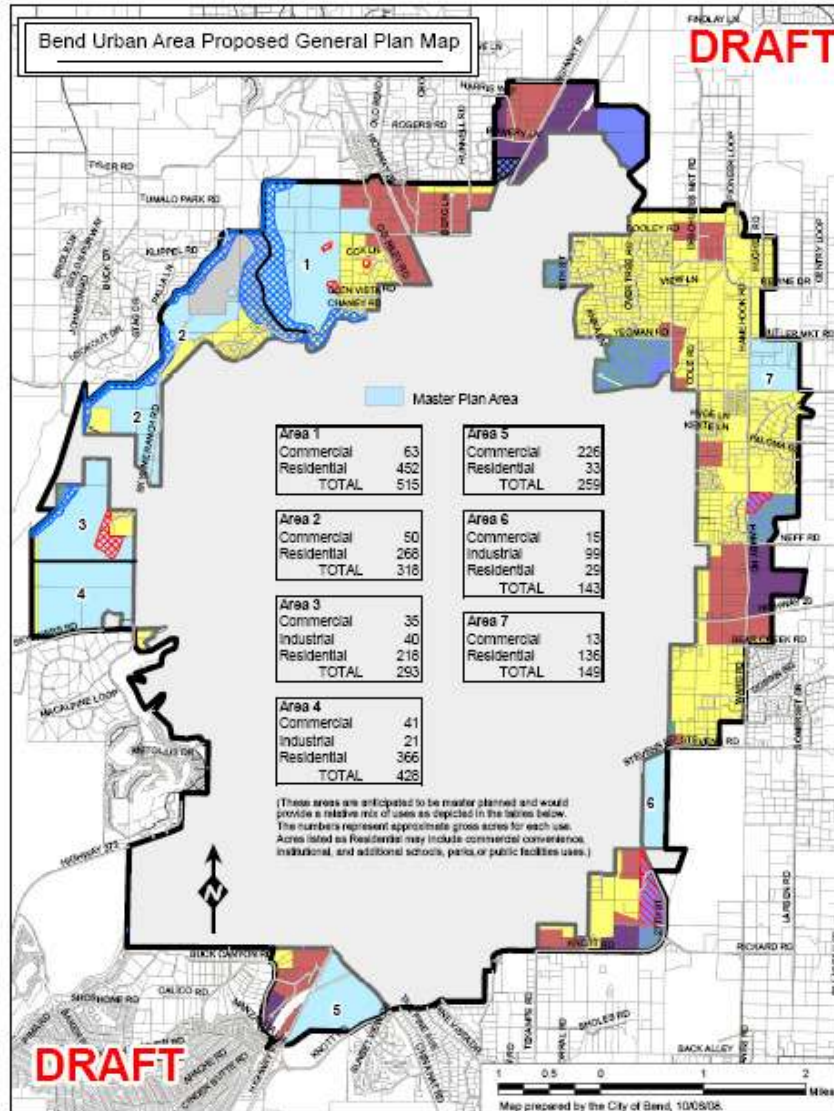






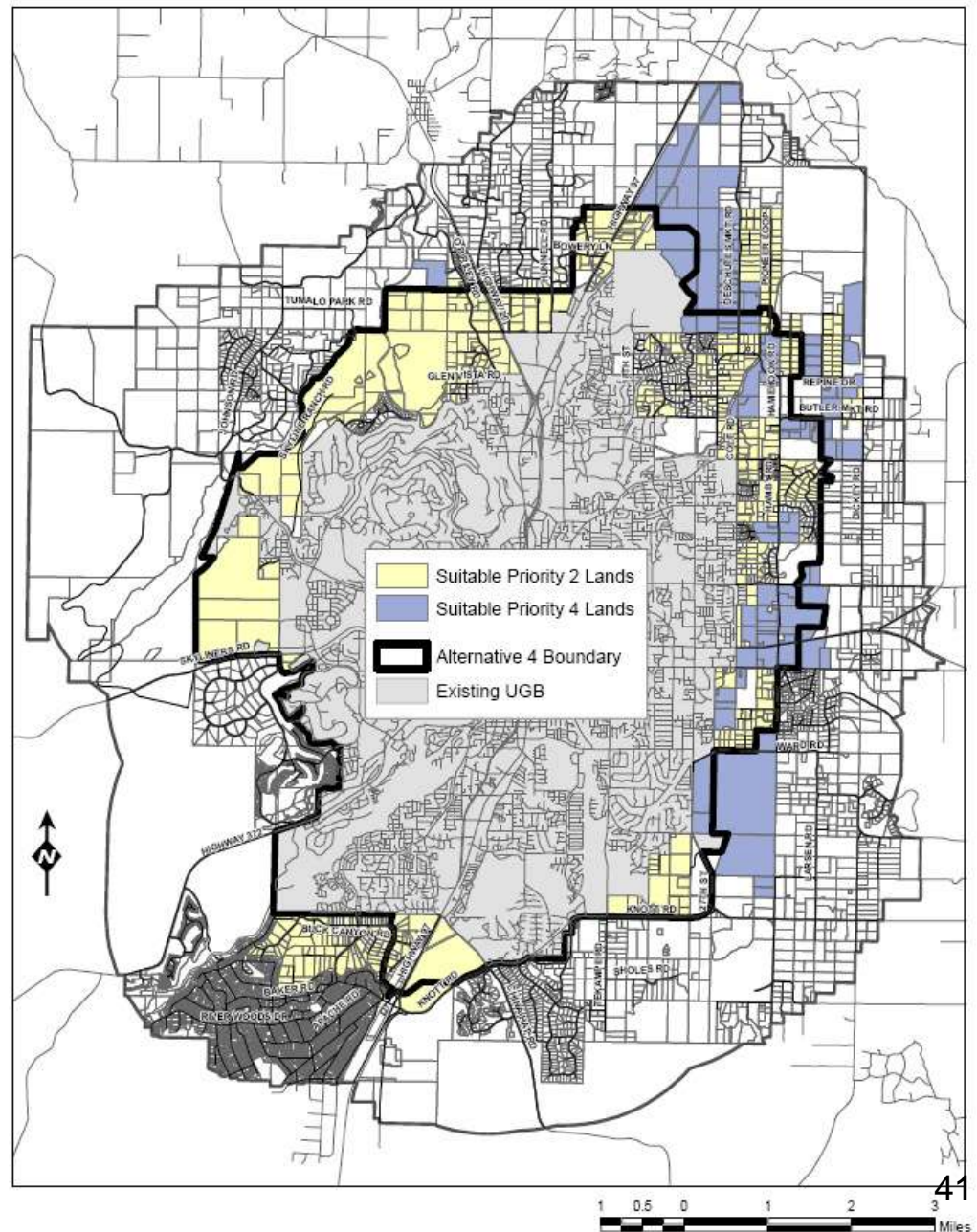
# Bend Urban Area Proposed General Plan Map

**DRAFT**





## Proposed UGB Expansion (Alternative 4)

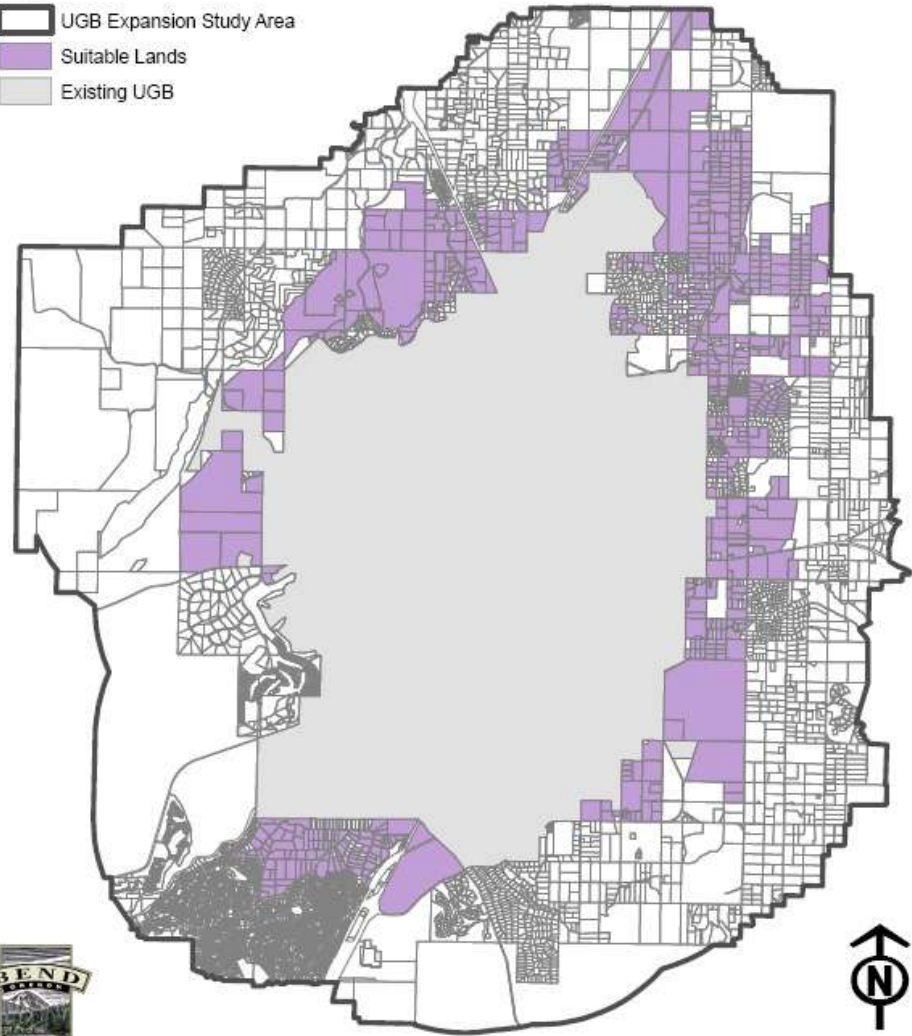




## Suitable Lands in UGB Expansion Study Area

### Legend

- UGB Expansion Study Area
- Suitable Lands
- Existing UGB



1 0.5 0 1 2 Miles

# Bend

- Adds 8,462 gross acres
- Adds 5,475 buildable acres
- Identified need for 4,956 buildable acres
  - Housing and related uses: 2,866 acres
  - Employment and related uses: 2,090 acres
- Extra 519 acres described as “modest cushion”
- Done as Post-Acknowledgment Plan Amendment, not in Periodic Review
- Must be submitted to DLCD/LCDC “in the manner provided for periodic review” because it “includes more than 50 acres.” ORS 197.626.

# Bend Timeline

- 2004: Announce UGB update project; work with consultants, stakeholders, TACs, planning commissions, elected officials, ODOT, DLCD, County, etc.
- 2007: City initiates legislative PAPA
- 2008:
  - Oct: Planning Commission recommendation
  - Nov: City Council/County BofC joint hearing
  - Dec: Deliberations and work sessions
- 2009:
  - January 5: Final adoption by City Council
  - ? : Final adoption by County Commissioners
  - Submittal to LCDC under 50+ acre statute
  - Final decision by LCDC likely by mid-to-late 2009
- 2010
  - At Court of Appeals if LCDC decision is appealed



# Bend Issues

- Many contenders for inclusion
- Private properties of many shapes, sizes, and locations.
- City-owned 1400-acre Juniper Ridge property.
  - 500 acres already inside UGB and master-planned

# Bend Housing Mix Issue

- HB 2709 extrapolation model: 77 detached/23 attached
- State Housing Needs model 45/25
  - Recommended by DLCD
- “Transition model” 65/35
  - Adopted by city/county

# Bend Housing Density Issue

- DLCDD says projected densities are lower than they should be, given minimums and maximums
- City says projected densities are realistic estimates, somewhere between minimum and maximum densities.
  - Cites Goal 14 rule statement that 20-year land need determinations “are estimates” and “should not be held to an unreasonably high level of precision.”



# Bend Efficiency Measures

- DLCD criticizes measures to encourage higher-density development in city core and along transit corridors.
- City cites success of numerous alternative measures put in place since 1998 update increasing average densities from 3.8 to 5 units per acre.
  - Easing standards and procedures
  - Establishing minimum densities
  - Allowing additional density-friendly housing types
- City says alternative measures allow current UGB to accommodate 1,100 additional units

# Bend auxiliary use issue

- Goal 14 allows change in UGB based on demonstrated “need for livability, or uses such as public facilities, streets and roads, schools, parks or open space.”
- City chooses not to use “safe harbor” standard in new Goal 14 rule. Uses 21% for roads, 15% for schools, parks, institutional, etc., in res. Inv.
- DLCDC cites safe harbor figures.
- City says safe harbors are not standards.

“The 2008 EOA presents a rationale. Factors have been applied to land need between 25 to 50 percent to increase supplies above a minimum need determination based on employment projections and employment densities. Given the uncertainty inherent in forecasting employment and future employment land needs, the city finds these factors to be appropriate, necessary, and conservative. These factors are necessary in order to distribute economic lands and provide choice in the market place so businesses have a variety of sites to select for their unique business needs. Given that Bend is the regional hub of retail, industrial, commercial, medical, and educational uses, these factors are an appropriate response to uncertainty and need for a well integrated UGB expansion. Also considering Deschutes County and Bend have experienced, and are expected to see some of the highest rates of population and employment growth in the state over the next 10 to 20 years, these factors are necessary to insure Bend has an adequate and responsive economic land base to support expected and unexpected growth.”

Bend Findings p. 51-52



# Bend Goal 9 Issues

- Excess land supply:
  - 2008 EOA “presents a rationale for providing slightly more economic land in the expanded UGB than minimum land need estimates predict.
  - “between 25 and 50 percent”
  - “necessary to distribute economic lands and provide choice in the market place.”
  - “Bend is the regional hub of retail, industrial, commercial, medical, and educational uses.”
  - Bend and Deschute County have had and will have high rates of growth.
  - Markets are uncertain and models are approximate.

# Bend Goal 9/ORS 197.298 issues

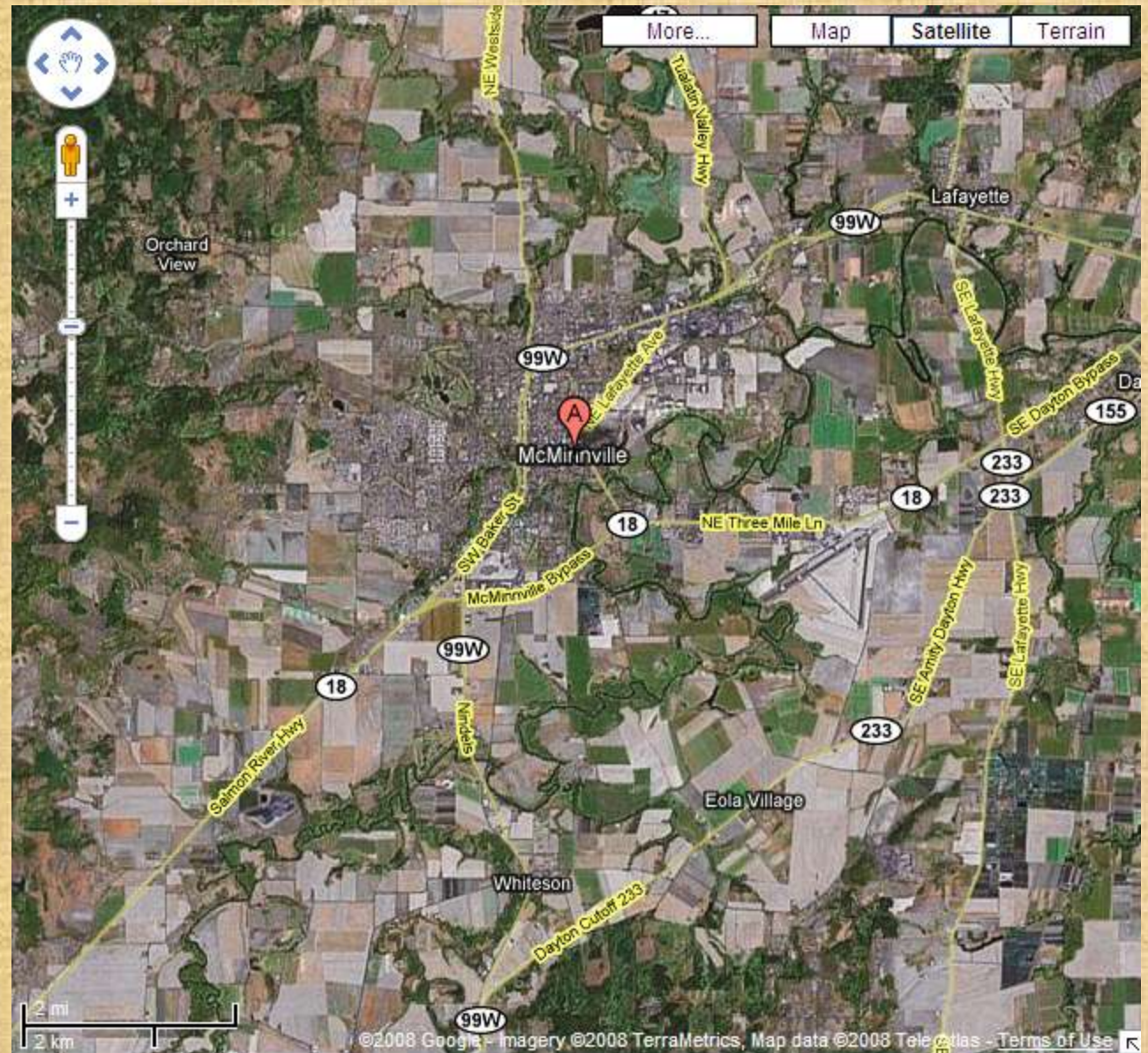
- DLCD objected to auto-mall as a “special site” need.
- City deleted land for commercial/auto mall and industrial area along N. Highway 97.
- DLCD, farmers objected to amount of Priority 4 acreage and raised compatibility issues.
- City deleted 143 acres of Priority 4 acreage.

# Bend Goal 9/ORS 197.298 issues

- City identified need for site for four-year university. Added 215 acres of its 1400-acre Juniper Ridge property.
- City deleted mixed-employment and industrial acreage along west side of Hwy 97 in response to
  - ODOT letter about transportation impacts and lack of funding,
  - DLCDD claim that UGB added more land than justified by the record.



# McMinnville



# McMinnville

- LCDC Approval Nov. 17, 2008
- Adds about 900 acres
  - Reduced by about 200 acres by alternative measures.
- Started as series of PAPAs
  - Initial steps were appealed
    - By DLCD on segmentation
    - By others on choice of areas to include
  - Completed in periodic review



# McMinnville Timeline - 2001

- May, 2001: City adopted ORS 197.296 housing needs analysis concluding that city's housing needs for period ending 2020 would require expanding UGB by 449 acres for housing and another 412 acres for parks, schools, and other public services.
- December 2001, LUBA remanded, agreeing with DLCD/1000 Friends that decision wasn't final until adoption of final decision on UGB expansion.



# McMinnville Timeline - 2002

- Adopted Economic Opportunities Analysis
- Moved plan period end from 2020 to 2023
- Updated Residential Lands Study to 2023
- Updated Population forecast to 2023
- Increased baseline land need to “1,125 acres of gross vacant buildable land beyond the current urban growth boundary.”

# McMinnville Timeline - 2002

- Reduced need from 1,125 to 900 vacant buildable acres based on alternative measures.
- Completed alternative lands analysis under Goal 14 and ORS 197.298, and selected lands totalling 1,539 gross acres of which 891 were considered buildable.

# McMinnville Timeline 2003

- Submitted completed UGB expansion project to LCDC as a final work task in periodic review.
- Opponents submitted objections
  - Expanding onto farmland instead of exception areas.
  - Amount and type of land for parks
  - Calculation of high-density housing need and determination of acreage needed for residential uses.



# McMinnville Timeline 2004

- DLCD director issues order on work task
- Opponents appeal to LCDC
- LCDC holds hearings
- LCDC issues partial approval and remand order December 3, 2004

# McMinnville Timeline 2005

- City amends EOA, findings, and plan provisions.
- County co-adopts as necessary
- City resubmits work task

# McMinnville Timeline 2006

- Opponents submit objections to resubmitted work task.
- DLCD and LCDC complete review process.
- LCDC approves resubmittal, including UGB expansion, on November 8, 2006



# McMinnville Timeline 2007

- Opponents appeal work task approval to Court of Appeals
- Opponents file opening brief in August
- LCDC withdraws its decision for reconsideration in November.

# McMinnville Timeline 2008

- Parties explore settlement
- City chooses to press on.
- LCDC considers amended decision in September.
- LCDC issues Order on Reconsideration November 17, 2008.